



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2013

The Honorable Denise L. Cote
United States District Judge
Southern District of New York
500 Pearl Street, Room 1610
New York, NY 10007

D&F
6/6/13

Re: *The State of Texas et al. v. Penguin Group (USA) Inc. et al.*, No. 12-cv-03394 (DLC); *In re Electronic Books Antitrust Litig.*, No. 11-md-02293 (DLC)

Dear Judge Cote,

During trial this morning, the Court requested clarification that the States are pursuing their state law claims only to the extent that those claims are congruent with Section 1 of the Sherman Act. The Court had previously suggested, at the Final Pretrial Conference on May 23, that the States voluntarily dismiss any state law claims that did not fall into that category. The States took the Court up on its suggestion and, on May 28, filed a Rule 41(a) Motion seeking to voluntarily dismiss claims asserted pursuant to certain statutes of 6 states, as well as seven state common law claims. The court granted that motion on May 29.

As to the remaining claims, Apple asserts only that those claims must necessarily fail if the States' Section 1 claims fail. *See* Apple Inc.'s Opposition to Plaintiff States' Supplemental Memorandum of Law on State Law Claims, filed May 17, at 5-8 (listing claims under the laws of 29 states that "parallel Sherman Act Section 1"); 9-10 (listing claims under the laws of seven states that "parallel Federal Trade Commission Act Section Five" and conceding that "Section 5 of the FTC Act has long been understood to reach conduct that would also violate the Sherman Act."). All remaining state law claims parallel Section 1 of the Sherman Act and a finding that Apple violated Section 1 is sufficient to support a finding of liability thereunder.

Respectfully submitted,

David Ashton
Assistant Attorney General
Antitrust Section
(512) 936-1781
(512) 320-0975 (fax)
david.ashton@texasattorneygeneral.gov